

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HON'BLE THE CHIEF JUSTICE MR.V.K.BALI
&
THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

MONDAY, THE 20TH NOVEMBER 2006 / 29TH KARTHIKA 1928

WA.No. 928 of 2006()

AGAINST THE JUDGEMENT IN OP.21062/1999 Dated 20/12/2005
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APPELLANT: ADDL.2ND PETITIONER.

C.MATHU AMMA, CHENGATTU HOUSE,
KIZHAKKETHARA, KUTHANNOOR, PALAKKAD.

BY ADV. SRI.S.EASWARAN

RESPONDENTS/RESPONDENTS

1. STATE OF KERALA, REPRESENTED BY THE
CHIEF SECRETARY, THIRUVNANTHAPURAM,.
2. THE TAHSILDAR, ALATHUR.
3. THE VILLAGE OFFICER,
KUTHANNOOR VILLAGE, P.O.KUTHANNOOR.
4. THE TODDY WORKERS WELFARE FUND BOARD,
DISTRICT OFFICE, PALAKKAD.
5. C.UNNIKRISHNAN, S/O.CHAMI,
KUNIYAMPURA, P.O. KUTHANNOOR, PALAKKAD.
6. C.MOHANAN, DO. DO.

BY ADV. SRI.P.N.KRISHNANKUTTY ACHAN(SR.)
SRI.K.MOHANA KANNAN
R1 TO R3 BY SR. GOVERNMENT PLEADER MR.M.R.SABU
R4 BY SRI.A.K.JOHN, SC, KTWWF BOARD

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD
ON 20/11/2006, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

V.K. BALI, C.J. & S.SIRI JAGAN, J.

W.A.No.928 of 2006

Dated, this the 20th day of November, 2006

JUDGMENT

V.K.Bali,C.J.(Oral)

Challenge in the present writ appeal is to order dated 20th December, 2005 in O.P.No.21062 of 1999 passed by the learned Single Judge. The appellant before us is the second petitioner in the original petition filed by her son challenging Exts.P3 and P4. The son of the appellant had purchased 0.5670 hectare of land in Kuthanur Village as per the sale deed Ext.P1 from the additional 5th respondent. It is the case of the appellant that ever since he purchased the property it is in their possession and prior to the sale of the property the 5th respondent offered it as solvency for the conduct of toddy shop. Since there was failure on the part of 5th and 6th respondents, proceedings were initiated by respondents 1 to 3 and for that purpose Exts.P3 and P4 were issued. In such circumstances, it is the case of the appellant that late Karunakaran approached this Court by filing the original petition for quashing Exts.P3 and P4 which has been dismissed by

the impugned judgment. It is clear from a reading of the impugned judgment and still from the arguments also that what the learned counsel pleads at this stage is that the recovery proceedings were opposed on the plea of limitation. The learned Single Judge while dealing with the issue observed as follows:

“It is conceded that the recovery proceedings were initiated within twelve years and since the liability is covered by mortgage and since revenue recovery is initiated within twelve years, there is no limitation.”

2. Assuming that the appellant did not concede that the liability was covered by mortgage and concession was only with regard to proceedings having been initiated within twelve years, it shall have to be shown that the finding arrived at by the learned Single Judge that the liability is covered by mortgage is incorrect. No material at all has been placed on record that may detract from the findings recorded by the learned Single Judge. If the liability was covered by mortgage, the plea of limitation would fail. The proceedings could be initiated within twelve years. There is no merit in the writ appeal, which is hereby dismissed.

3. At this stage learned counsel states that the appellant be given three months time to make payment of the arrears of

toddy workers welfare fund contribution and the property be not sold within that time. The request made by the counsel is accepted in the facts and circumstances of the case and also for the reason that the same has not been opposed by the learned counsel for the respondents.

**V.K. BALI,
CHIEF JUSTICE.**

**S.SIRI JAGAN,
JUDGE.**

vns